**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

S. B. CRIMINAL MISC. PETITION NO. 526/2005

DHIRENDRA SINGH
v
STATE OF RAJASTHAN & ANR.

Date of Judgment: 4th August, 2006

Hon'ble Mr. Justice R. S. Chauhan

Mr. V.P. Yadav for the petitioner.
Mr. S.N. Gupta, P.P.
Mr. K.P. Singh for the complainant.

By Court:
REPORTABLE

The petitioner has challenged the continuation of the investigation in FIR No. 63/2005 registered at P.S. Udyog Nagar, District Bharatpur for the offence under Section 323, 498-A and 496 IPC.

The brief facts of the case are that the petitioner and respondent No. 2 were married on 28.2.2002 according to Hindu rites. However, after the marriage the petitioner discovered that his wife is physically ill. Whenever he would enquire about her health, she would quarrel with him and his parents. During the period of pregnancy and even after the pregnancy he asked respondent No.2 about consuming lot of

medicines. But, the respondent No.2 would not tell him the reasons for consuming so many medicines. Once he even saw her vomiting blood. When he enquired about vomiting of the blood, she made some excuses and claimed that the blood was coming from her teeth. On 6.3.03, the respondent No.2 delivered a girl. The child was born with a tumor on her right eye. When the same was examined, the doctors told the petitioner that the child is suffering from tuberculosis which has been transmitted by the mother. Thus, the petitioner discovered that the respondent No. 2 was suffering from tuberculosis even prior to the marriage – a fact which was never revealed to him prior to the marriage. Whenever the petitioner confronted her with this fact, she would quarrel with him and would abuse both him and his parents and other family members. Finally she left the matrimonial home on 22.11.03. Despite the best of the efforts made by the petitioner to bring respondent No. 2 back to the matrimonial home, the respondent No.2 refused to go back. Therefore, on 18.5.04 the petitioner filed a divorce petition in the Court of Civil Judge at Mathura. Subsequently, the said petition was amended on 1.10.04. Ever since the respondent

No. 2 received the notice of the said petition, the family members of respondent No.2 started threatening the petitioner that he would be implicated in a false dowry case or that he would be killed. The petitioner filed a complaint before the Superintendent of Police, Bharatpur on 10.9.04, wherein he informed the police that the family members of respondent No.2 were threatening him. On 28.9.04 he also informed the Senior Superintendent of Police, Mathura that respondent No.2, her father and brother were threatening his life. On 15.10.2004, the respondent No. 2's father and brother, Harchand and Krishnaveer came to the petitioner's house and assaulted his parents in his absence. The petitioner informed the police station Magorra, and a formal FIR No. 46/04 was registered for offences under Section 323, 504 and 506 IPC against the brother and father of respondent No.2. Since the matter related to non-cognizable offences, therefore the Court of A.C.J.M. directed the police to carry out an investigation under Section 155(2) Cr.P.C. However, since no action was being taken by the police properly, on 5.11.2004, the petitioner complained to the Sr. Superintendent of Police, Mathura. He

also submitted a complaint to the District Collector, Mathura on 7.12.2004. Allegedly, on 24.12.04, the brother of respondent No.2, Krishnaveer, came alongwith anti-social elements and again assaulted and abused the petitioner's family members. A complaint about this incident was submitted to the Senior Superintendent of Police at Mathura. Since the petitioner's family was terrorised by the repeated assaults by the family members of respondent No.2, on 17.1.05, the petitioner's father filed a complaint before the Senior Superintendent of Police, Mathura and prayed that action be taken against them under Section 107/116 Cr.P.C. On the basis of this complaint eventually proceedings under Section 107/116 were started against the respondent No.2, Harchand and Krishnaveer before the Sub-Divisional Magistrate, Mathura. Meanwhile the petitioner also lodged a criminal complaint before the Court of Addl. Chief Judicial Magistrate, Bharatpur against respondent No. 2, Harchand and Krishnaveer, Shanti Devi, Mamta, Dalveer Singh, Manoj and Dhani Ram. This complaint was sent for investigation by the learned Magistrate and a formal FIR No. 55/05 was registered for offences under Section 143, 323,

341 and 379 IPC. In order to retaliate against the FIR lodged by the petitioner, the respondent No. 2 on 22.3.05 lodged an FIR against the petitioner, his parents, his brother and sister for offences under Section 323, 498-A and 406 IPC at Police Station Udyog Nagar, Bharatpur. The said FIR was registered as FIR No. 263/05. It is this FIR, which is under challenge before this Court.

Vide order dated 13.5.05 this Court had called for the case diary. However, despite the lapse of seven months, the case diary was not received by this Court. Therefore, vide order dated 3.12.05, this Court called not only for the case diary, but also directed the learned Public Prosecutor to ensure that the Investigating Officer is present before this Court on 14.12.05. On 14.12.05, this matter could not be taken up. Therefore, the case was posted for 16.12.05. However, on 16.12.05, the matter did not reach. Hence, the case was posted for 20.12.05. On 20.12.05, the Investigating Officer, Mr. Rajesh Meena appeared before the court. The Court asked the Investigating Officer if while investigating the case, he has examined all the complaints filed by the petitioner and his

family members before the police, before the District Collector and before the courts. Mr. Meena frankly admitted that this aspect of the matter had not been examined by him. Therefore, one month's time was given to Mr. Meena to examine this aspect of the matter and to submitted his report before this Court. This court also directed respondent No. 2 to be present before the Court on the next date of hearing, for, the case seemed to be a case between the husband and wife in which the families of both the parties were unnecessarily being dragged into. The court felt that a genuine effort should be made for reconciling the two parties for saving their matrimony and their matrimonial home. On 13.2.06 both the parties were present in person and so was Mr. Rajesh Meena. However, he did not submit any investigation report as directed by this Court. Thus, the case was directed to be listed for 24.2.06. On 24.2.06 the petitioner and his father, the respondent No.2 and her brother, Krishnaveer Singh, were present before the Court. The court endeavored to reconcile the petitioner and the respondent No.2 and to convince them that they should live peacefully as husband and wife. However, the respondent No.

2 was adamant that she did not want to go back to the petitioner. The efforts to reconcile the husband and wife were continued from 28.2.06 to 4.4.06. However, on 4.4.06 the petitioner's father categorically refused to take the responsibility for taking the respondent No. 2 back into the matrimonial home. According to him the respondent No.2 has always abused and threatened the in-laws and his family. Moreover, even the petitioner was not willing to take back the wife, as according to him the wife and his in-laws have always abused and assaulted him and his family members. Hence the case was directed to be posted on 31.7.06. Eventually, the case was listed on 4.8.06.

Mr. Vinaypal Yadav, the learned counsel for the petitioner has narrated the entire gamut of events which have already been noticed above. He further argued that the FIR lodged by respondent No. 2 was a salvo against the divorce petition filed by the petitioner. According to the learned counsel, the petitioner's troubles began after he had filed the divorce petition. Initially respondent No.2 and her family members tried to physically assault the petitioner and his family

members and tried to psychologically intimidate him into withdrawing the divorce petition. However, when they could not succeed in their design, they resorted to filing of a false case against the petitioner by lodging an FIR for offence under Section 323, 498-A and 406 IPC. Hence the said FIR is absolutely motivated and tentamounts to abuse of the process of law.

On the other hand, Mr. K.P. Singh, the learned counsel for the complainant, argued that the respondent No. 2 and her family members have been trying to reconcile the marriage which was broken and was in pieces. But, despite their best efforts, the petitioner and his family members have always abused the respondent No.2 whenever she stayed with him. He has further argued that an investigation should not be interfered with lightly at the initial stage. The learned Public Prosecutor has echoed the contentions raised by Mr. Singh.

We have heard learned counsels for the parties and the learned Public Prosecutor for the State.

Although at the first blush this case appears to be a criminal case, but recently in the case of B.S. Joshi & Ors. Vs. State of Haryana & Anr. (2003 Cr.L.R. (SC) (Supp.) 526) while dealing with a case under Section 498-A/323 and 406 IPC, the Hon'ble Supreme Court has held that the offence under Section 498-A is compoundable and Section 320 of the Code of Criminal Procedure does not affect the powers of the High Court under Section 482 of the Code. Since the said offence is compoundable and since matrimonial harmony should be maintained as much as possible, the court should endeavour to strike a reconciliation between the husband and the wife. Undoubtedly, the family is a basic unit of the society. Therefore, the family unit needs to be protected and promoted. In case there is a threat to the family as a unit, by the fighting of the husband and the wife, the court must try, at the first instance, to harmonise the relationship between the husband and wife. In case the court fails to strike a reconciliation between the two parties, the court is free to decide the case on its merits.

Thus although the case came before this Court in a form of criminal miscellaneous petition, still, taking the matter to be more of a family problem between the husband and the wife and their respective families, this court endeavored to settle the dispute between the warring parties. However, despite the best efforts made for five months, the court always found the petitioner and his family members being frightened by the respondent No. 2 and her kins. Even during the course of discussion within the Chamber, the respondent No. 2 always adopted a threatening posture. According to her the petitioner's sin was that he had sought a divorce from her. According to her and her family members they would go to any length to teach the petitioner and his family members a lesson. The course of events narrated above also clearly show the terror which has been unleashed by respondent No.2 and her family members upon the petitioner and his family members. Since differences have arisen between the husband and the wife, since the wife had left the matrimonial home, the petitioner was justified and legally entitled for filing the divorce petition. Therefore, the petitioner cannot be chasitized for having filed the divorce

petition. Initially the respondent No.2 and her kith and kin tried to terrorise the petitioner and his family members into silence and submission. However, when the petitioner and his family members refused to yield to the pressure tactics adopted by the respondent No.2's family members, the respondent No.2 lodged the FIR. It is pertinent to mention that the divorce petition was filed on 18.5.04 and the reign of terror began on 10.9.04 and the present FIR was filed after one year and two months, i.e. on 22.3.05. Thus, the present FIR has been lodged with the ulterior motive of wrecking personal vengeance on the petitioner and his family members. The fact that the petitioner and his family members would be involved in a fabricated case of dowry demand was told by the petitioner to the Superintendent of Police, Bharatpur as early as on 10.9.04 (Annex.1). The threat became a reality on 22.3.05 with the lodging of the FIR.

No person can be permitted to abuse the law for seeking personal vengeance. The criminal law is meant as a shield to protect the interest of an individual. It is not meant to

be used as a sword for inflicting injuries on others out of a feeling of vengeance. In the case of State of Haryana Vs. Ch. Bhajan Lal & Ors (AIR 1992 SC 604), the Hon'ble Supreme Court had laid down seven circumstances in which an FIR can be quashed and set aside. The seventh circumstance is “where the criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for reckoning vengeance on the accused and with a view to spite him due to private and personal grudge”. A bare perusal of the course of events narrated above clearly prove that the FIR is a motivated one for venting out the personal grudge of the respondent No. 2 and her family members. Undoubtedly this amounts to the gross abuse of the process of law and of the process of the Court.

In the case of M/s. Indian Oil Corporation Vs. M/s. NEPS India Ltd. & Ors. (2006 (2) WLC (SC)(Cr.) 253), the Hon'ble Supreme Court has observed “it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on

account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged". Therefore, in the present case it is obvious that the respondent No.2 and her family members have taken recourse to the criminal proceeding as a means to settle the civil dispute which is pending before the civil court in the form of a divorce petition. They have also tried to entangle the petitioner so as to pressurise him for a settlement. Therefore, this tactic is deprecated and discouraged.

In the result this petition is allowed. The FIR No. 63/05 registered at P.S. Udyog Nagar, District Bharatpur is hereby quashed. However, the petitioner is directed to deposit all the articles received by him, at the time of marriage with the

respondent No.2, in the police Station Udyog Nagar, District Bharatpur within a period of two weeks. The S.H.O., P.S. Udyog Nagar, District Bharatpur is directed to contact Smt. Mala D/o Shri Harchand R/o village Dhormui, P.S. Udyog Nagar, District Bharatpur and to call her family members and to deliver the possession of the goods deposited by the petitioner. This order of quashing the FIR shall become effective only after the goods are delivered to the police, and the same is handed over to Smt. Mala Devi.

(R.S. CHAUHAN) J.

MRG.